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Co-Lead Counsel for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

IN RE WAL-MART WAGE AND HOUR
EMPLOYMENT PRACTICE LITIGATION

MDL 1735

2:06-CV-00225-PMP-PAL
(BASE FILE)

THIS DOCUMENT RELATES TO:
ALL ACTIONS

MOTION TO STRIKE OR, ALTERNATIVELY, TO ALLOW RESPONSE

Co-Lead Counsel Robert J. Bonsignore and Class Counsel, who have moved for Confirmation of the Arbitrator's Order ("Moving Parties"), move to strike the Mills Group's filing of May 6, 2011 (Docs. #782 to 782-4) as an unauthorized sur-reply brief in violation of the Court's Order (Doc. #736) scheduling briefing on the issue of confirmation of Judge Phillips's § 22.9 award.

Procedural Background

On March 14, 2011, the Court summarized the filings before it as follows:

1 “Presently before the Court is the Notice of Allocation Order and
2 Request for Court Order Instructing Claims Administrator to
3 Release Payment of Attorneys’ Fees to Plaintiffs’ Class Counsels
4 (Doc. #722), filed on January 26, 2011. Carolyn Beasley Burton
5 and Robert W. Mills of the Mills Law Firm, and Carol LaPlant
6 filed an Opposition (Doc. #725) on January 27, 2011. Robert
7 Bonsignore filed a Reply (Doc. #730) on January 30, 2011. Robert
8 Bonsignore also filed a motion to strike the Opposition (Doc.
9 #731), and an ex parte motion to file the arbitrator’s award under
10 seal (Doc. #732), on January 31, 2011. Carolyn Beasley Burton,
11 Robert Mills, and Carol LaPlant filed an opposition to the motion
12 to strike (Doc. #733) on February 17, 2011. Robert Bonsignore
13 filed a reply (Doc. #734) on February 28, 2011. Robert
14 Bonsignore also filed a motion for hearing on the above filings
15 (Doc. #735) on March 11, 2011.”

16 Order of March 14, 2011 (Doc. #736)

17 The Court then made the following order:

18 “[T]he Court will treat the Notice as a motion to confirm
19 the arbitration award issued by the arbitrator in January 2011. The
20 Notice was not denominated as a motion to confirm the award, and
21 made no reference to the Federal Arbitration Act (“FAA”).
22 Nevertheless, Co-Lead class counsel Robert Bonsignore
23 (“Bonsignore”) now requests the Court to treat the Notice as a
24 motion to confirm the award. The Court therefore will order any
25 party opposing confirmation of the award to file an opposition no
26 later than April 11, 2011. *Such opposition must include any*
27 *grounds for vacating the award under FAA §§ 10-11.* Any party
28

supporting confirmation of the award must file a reply no later than
April 26, 2011.”

Id., at 3 (emphasis added).

This was done.¹

Discussion

On May 6, 2011, without leave of this Court, the Mills Group filed an additional document, one it styled as a “Reply Brief in Support of Motion to Vacate the Arbitrator’s Ruling and in Opposition to Confirmation.” (Docs. #782 to 782-4). By doing this, the Mills Group filed both an opposition to Co-Lead Bonsignore’s motion to confirm the award and a sur-reply to his reply to that opposition. This ignores the limits of the Court’s Order, presumes on the Court’s discretion and should be stricken. *See* LR 7-2

In the alternative, and in the interest of fairness, Co-Lead Bonsignore requests leave to respond to the sur-reply.

Conclusion

WHEREFORE, Moving Parties respectfully request, for good cause shown, that the Court enter an order striking the Mills Group’s sur-reply of May 6, 2011 (Docs, #782 to 782-4) or, in the alternative, allowing Moving Parties to respond to the sur-reply.

Dated May 9, 2011

Respectfully submitted:

By: /s/ Robert J. Bonsignore
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¹ Docs. #737 to 744 and Docs. #750 to 779, respectively. The voluminous CM/ECF filings on both dates spilled over past midnight.

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CERTIFICATE OF SERVICE

X By Electronic Filing: I served a true copy on this date of each document listed above on all parties registered for electronic filing of this action.

Executed this May 9, 2011

/s/ Robert J. Bonsignore
Robert J. Bonsignore